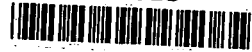


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January 23, 1985

REGION II

Withdrawal of Order Issued 12/04/85, Index No. II-CERCLA-50102, as to 5 Petitioning Respondents: Duane Marine Salvage Corporation

Douglas R. Blazey
Regional Counsel

William J. Librizzi, Director
Emergency and Remedial
Response Division

Christopher J. Daggett
Regional Administrator

Attached for your review and approval is a Withdrawal of Orders, to be issued in connection with the Duane Marine site in Perth Amboy, New Jersey, affecting 5 of the original 35 respondents to the above-captioned Order which you signed on December 4, 1984.

The original Order, issued unilaterally for a CERCLA removal action, named 35 respondents, among them 33 who were identified as responsible parties for the release of hazardous substances, pollutants, or contaminants to the environment from the Duane Marine facility, in their respective capacities as generator respondents. As generator respondents, the named parties were found to have arranged with the Duane Marine Salvage Corporation for Duane Marine's transport and ultimate disposal of wastes that included hazardous substances.

Certain of these 35 respondents have petitioned for withdrawal of Order No. 50102, and any subsequent amendments to that Order. Through their respective counsel or through officers of their respective corporations, these petitioning parties have submitted information for EPA's consideration that supplements the information upon which EPA based its original decision to issue the Order.

After a careful review of the entire record, we have determined that we have no evidence at this time that would merit a conclusion that the 5 petitioning parties listed below are responsible parties under CERCLA for the environmental conditions to which EPA's December 4, 1984, Order was addressed. Our determination is based upon our satisfaction with the petitioners' demonstration of the following facts:

1. Bell Laboratories, Division of American Telephone & Telegraph Co., arranged to have a mixture of No. 6 fuel heating oil and ground water transported to the Duane Marine facility for disposal. (The Duane Marine Corporation operated as an oil spill cleanup facility in

addition to its function as a hazardous waste disposal facility.) Neither No. 6 fuel oil nor ground water is a hazardous substance. Section 101(14) of CERCLA exempts petroleum from classification as a hazardous substance.

2. Bird & Son, Inc., had Duane Marine pick up a mixture of oil and water. The oil was a Mobil Thermal Oil, Mobiltherm 603. Mobiltherm 603 is a petroleum product which contains no additives that would make it a hazardous substance under CERCLA. No other materials were sent to Duane Marine by Bird, to our knowledge.

3. NL Industries, Inc., retained Duane Marine to handle an oil spill. The oil was No. 6 fuel oil. To our knowledge, NL sent no substance other than the spilled oil, oil mixed with rain water, and oily debris from the cleanup. These were not hazardous substances under CERCLA.

4. The Rusty Scupper Restaurant retained Duane Marine to clean up and dispose of spilled fuel oil and oil-stained gravel and debris from the roof of the newly constructed restaurant. This was, as far as we know, the sole transaction between Rusty Scupper and Duane Marine. The oil was No. 1 fuel oil for heating, and is not a hazardous substance under CERCLA.

5. The Township of Mahwah was inappropriately billed for the cleanup of an oil spill resulting from a motor vehicle collision on a highway within the township limits. The Township of Mahwah was not in any way involved as a generator of any hazardous substances ever sent to Duane Marine.

For the above particular reasons in each case respectively, and because we are at this time satisfied with the documentation presented by each petitioner of these facts, we have determined that none of these 5 parties was appropriately named as a respondent in the Duane Marine Order.

Accordingly, we recommend that our Orders of December 4, 1984, and the supplemental Order of December 18, 1984, be withdrawn as to the 5 respondents named in this memorandum.

Attachment